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OFFICE OF PETITIONS

In re Application of	:	
Michael E. Ring, et. al.	:	
Application No. 09/664,190	:	ON PETITION
Filed: September 18, 2000	:	
Attorney Docket No. CDR 99333	:	

This is a decision on the petition under 37 CFR 1.181, filed September 13, 2004, to withdraw the holding of abandonment. This is also a decision on the petition under 37 CFR 1.137(b), filed February 28, 2005, to revive the above-identified application.

The petition under 37 CFR 1.181 is **DISMISSED**.

This application became abandoned for failure to reply in a timely manner to the Notice to File Missing Parts of Nonprovisional Application mailed November 1, 2000. The Notice set a period for reply of two (2) months from the mail date of the Notice. No extensions of time under the provisions of 37 CFR 1.136(a) was obtained. Accordingly, the application became abandoned after midnight January 1, 2001.

With respect to the petition under 37 CFR 1.181, applicant states that a response was timely filed on January 5, 2001. In support, petitioner provided the Office with a copy of a postcard receipt, which itemizes a response to the Missing Parts, Declaration (including Deposit Account No. to charge the sum of \$130 to cover the surcharge fee), a duplicate copy of such letter and a copy of the Notice to File Missing Parts. Consequently, the postcard receipt contains a Certificate of Mailing under 37 CFR 1.8, dated January 5, 2001. The postcard also fails to contain a date stamp from the USPTO thereon.

A response to the Notice to File Missing Parts was due on January 1, 2001. However, since January 1, 2001 was a Federal Holiday, the response was due on the next succeeding day, which was January 2, 2001. Since no response was filed by January 2, 2001, the above application was properly held abandoned.

The petition under 37 CFR 1.137(b) is **DISMISSED**.

With respect to the petition under 37 CFR 1.137(b), a grantable petition must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Commissioner may require additional information. See MPEP 711.03(c)(III)(C) and (D). The instant petition lacks item(s) (1).

Office records disclose that the \$130 surcharge for the late filing of the Oath/Declaration has not been submitted. The Deposit Account listed on the response filed January 5, 2001, has been closed. Therefore, petitioner must submit the late filing surcharge of \$130.

Any request for reconsideration of this decision must be submitted within **TWO (2) MONTHS** from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is **not** a final agency action within the meaning of 5 U.S.C. § 704.

Further correspondence with respect to this matter should be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is **(571) 273-8300**.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3226.



Andrea Smith
Petitions Examiner
Office of Petitions